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AMENDED IN ASSEMBLY MAY 10, 2011

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 644

Introduced by Assembly Members Blumenfield and Atkins

February 16, 2011

An act to add and repeal Section 46300.8 of the Education Code, relating to ~~online education~~ schools.

LEGISLATIVE COUNSEL'S DIGEST

AB 644, as amended, Blumenfield. ~~Online education: school attendance.~~ *Schools: average daily attendance: online instruction.*

Existing law establishes the public elementary and secondary school system in this state, and further establishes a funding system pursuant to which the state apportions funds to local educational agencies based on, among other factors, the average daily attendance of pupils at the schools operated by those agencies. Numerous statutes and regulations govern the calculation and reporting of average daily attendance.

This bill, commencing with the 2013–14 school year, would authorize, for purposes of computing average daily attendance, the inclusion of pupils in grades 9 to 12, inclusive, under the supervision and control of a certificated employee of the school district or county office of education who is delivering synchronous, online instruction, as defined,

provided that this instruction meets specified criteria. The bill would require, if a school district or county office of education elects to offer synchronous, online instruction, that the school district or county office of education provide all pupils who choose to enroll in an online course access to the computer hardware or software necessary for the pupil to participate in the course. The bill would authorize the Superintendent of Public Instruction to establish rules and regulations for purposes of implementing these provisions.

Existing law establishes the public elementary and secondary school system in this state, and further establishes a funding system pursuant to which the state apportions funds to local educational agencies based on, among other factors, the average daily attendance of pupils at the schools operated by those agencies. Numerous statutes and regulations govern the calculation and reporting of average daily attendance.

This bill, commencing with the 2014–15 fiscal year, would provide that school districts, county offices of education, and charter schools that offer online courses may claim attendance toward average daily attendance on the basis of a pupil's attendance in an online course or courses that satisfy prescribed criteria.

The bill would require the Superintendent of Public Instruction, in consultation with the Controller and the Director of Finance, on or before December 31, 2013, to make revisions to any attendance accounting manual or guidance provided to school districts, county offices of education, or charter schools that are necessary to conform to these provisions, or to clarify these provisions with respect to attendance accounting procedures for asynchronous online courses, as defined. The bill additionally would require the Superintendent, in consultation with the Director of Finance, to adopt rules and regulations for purposes of clarifying or expanding the procedures required for verifying the identification of pupils participating in asynchronous online courses and including pupil attendance in asynchronous online courses in the calculation of average daily attendance.

The bill would make all of these provisions inoperative on July 1, 2018, and repeal them on January 1, 2019.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 46300.8 is added to the Education Code,*
2 *to read:*

3 46300.8. (a) *Commencing with the 2013–14 school year,*
4 *attendance of pupils in grades 9 to 12, inclusive, under the*
5 *supervision and control of a certificated employee of the school*
6 *district or county office of education who is delivering synchronous,*
7 *online instruction shall be included in computing average daily*
8 *attendance, provided that all of the following occur:*

9 (1) *The certificated employee providing the instruction confirms*
10 *pupil attendance through visual recognition or periodic voice*
11 *responses during the class period. A pupil logon, without any other*
12 *pupil identification, is not sufficient to confirm pupil attendance.*

13 (2) *The class has a regularly scheduled starting and ending*
14 *time, and the pupil is scheduled to attend the entire class period.*
15 *Average daily attendance shall be counted only for attendance in*
16 *classes held at the regularly scheduled time.*

17 (3) *An individual with exceptional needs, as defined in Section*
18 *56026, may participate in synchronous, online instruction only if*
19 *his or her individualized education program developed pursuant*
20 *to Article 3 (commencing with Section 56340) of Chapter 4 of Part*
21 *30 specifically provides for that participation.*

22 (4) *If a school district or county office of education elects to*
23 *offer synchronous, online instruction pursuant to this paragraph,*
24 *the school district or county office of education shall not deny*
25 *enrollment to a pupil based solely on the pupil's lack of access to*
26 *the computer hardware or software necessary to participate in the*
27 *course. If a pupil chooses to enroll in a course and does not have*
28 *access to the necessary equipment, the school district or county*
29 *office of education shall provide, for each pupil who chooses to*
30 *enroll in a synchronous, online course, access to the computer*
31 *hardware or software necessary to participate in the course.*

32 (5) *The ratio of average daily attendance for synchronous,*
33 *online pupils who are 18 years of age or younger to school district*
34 *full-time equivalent certificated employees responsible for*
35 *synchronous, online instruction, calculated as specified by the*
36 *department, shall not exceed the equivalent ratio of pupils to*
37 *full-time certificated employees for all other educational programs*

1 operated by the school district, unless a higher or lower ratio is
2 negotiated in a collective bargaining agreement.

3 (6) The ratio of average daily attendance for synchronous,
4 online pupils who are 18 years of age or younger to county office
5 of education full-time equivalent certificated employees who
6 provide synchronous, online instruction, to be calculated in a
7 manner prescribed by the department, shall not exceed the
8 equivalent ratio of pupils to full-time certificated employees for
9 all other educational programs operated by the high school or
10 unified school district with the greatest average daily attendance
11 of pupils in that county, unless a higher or lower ratio is provided
12 for in a collective bargaining agreement. The computation of the
13 ratios specified in paragraph (5) and this paragraph shall be
14 performed annually by the reporting agency at the time of, and in
15 connection with, the second principal apportionment report to the
16 Superintendent.

17 (b) The Superintendent may establish rules and regulations for
18 purposes of implementing this section.

19 (c) For purposes of this section, “synchronous, online
20 instruction” means a class or course in which the pupil and the
21 certificated employee who is providing instruction are online at
22 the same time and use real-time, Internet-based collaborative
23 software that combines audio, video, file sharing, and other forms
24 of interaction.

25 ~~SECTION 1. Section 46300.8 is added to the Education Code,~~
26 ~~to read:~~

27 ~~46300.8. (a) Commencing with the 2014-15 fiscal year, a~~
28 ~~school district, county office of education, or charter school may~~
29 ~~claim attendance toward average daily attendance, for purposes~~
30 ~~of calculating average daily attendance pursuant to Section 46300,~~
31 ~~on the basis of a pupil’s attendance in an online course or courses~~
32 ~~if all of the following apply:~~

33 ~~(1) The pupil is enrolled in grade 9, 10, 11, or 12.~~

34 ~~(2) The pupil is a California resident.~~

35 ~~(3) The pupil is enrolled in classes that include courses in a~~
36 ~~classroom-based setting, courses that are offered through an online~~
37 ~~program, or both.~~

38 ~~(4) The pupil meets minimum instructional time requirements~~
39 ~~pursuant to:~~

1 ~~(A) Section 46141 and Section 46201, 46201.5, or 46202, as~~
2 ~~applicable, for pupils enrolled in a noncharter school in a school~~
3 ~~district or county office of education.~~

4 ~~(B) Section 46170, for pupils enrolled in a continuation school.~~

5 ~~(C) Section 46180, for pupils enrolled in an opportunity school.~~

6 ~~(D) Subdivision (c) of Section 47612.5, for pupils enrolled in~~
7 ~~a charter school.~~

8 ~~(5) Each online course in which the pupil is enrolled is a~~
9 ~~high-quality online course.~~

10 ~~(b) For purposes of this section, a “high-quality online course”~~
11 ~~is defined as an online course that meets all of the following~~
12 ~~requirements:~~

13 ~~(1) The online course is approved by the governing board of~~
14 ~~the school district or county office of education, or by the~~
15 ~~governing body of the charter school.~~

16 ~~(2) The online course is certified to meet the requirements of~~
17 ~~this subdivision, through board resolution, by the governing board~~
18 ~~of the school district or county office of education, or by the~~
19 ~~governing body of the charter school.~~

20 ~~(3) The online course is certified by the governing board of the~~
21 ~~school district or county office of education, or by the governing~~
22 ~~body of the charter school, as being as rigorous as a~~
23 ~~classroom-based course and meeting or exceeding all relevant state~~
24 ~~content standards.~~

25 ~~(4) Either of the following:~~

26 ~~(A) The teacher is online at the same time as each pupil, is~~
27 ~~accessible to each pupil attending the synchronous online course~~
28 ~~to respond to pupil queries, assign tasks, and dispense information,~~
29 ~~and is able to make a visual connection with each pupil for~~
30 ~~purposes of verifying attendance or providing immediate~~
31 ~~supervision of the pupil.~~

32 ~~(B) The teacher may be online at different times than each pupil,~~
33 ~~is accessible to each pupil attending the asynchronous online course~~
34 ~~to respond to pupil queries, assign tasks, and dispense information,~~
35 ~~and, for purposes of verifying attendance, is able to employ at least~~
36 ~~one of the following:~~

37 ~~(i) Periodic proctored examinations.~~

38 ~~(ii) Direct teacher-pupil meetings no less than twice per calendar~~
39 ~~month.~~

1 ~~(iii) A visual connection, including, but not limited to, Internet~~
2 ~~Webcam.~~

3 ~~(5) (A) The ratio of pupils enrolled in that course to full-time~~
4 ~~equivalent certificated teachers teaching the online course is less~~
5 ~~than or equal to the ratio of pupils to teachers in traditional~~
6 ~~classroom study of the same subject matter in the school, school~~
7 ~~district, or the unified school district with the largest average daily~~
8 ~~attendance of pupils in that county for the prior school year, as~~
9 ~~reported on the Internet Web site of the department.~~

10 ~~(B) If the online course is new or deemed by the governing~~
11 ~~board of the school district or county office of education, or by~~
12 ~~the governing body of the charter school, to be unique to the online~~
13 ~~setting, the ratio of pupils enrolled in that course to full-time~~
14 ~~equivalent teachers teaching the online course shall not exceed 30~~
15 ~~to 1.~~

16 ~~(6) When a traditional classroom-based course of the same~~
17 ~~course title exists within the school district, county office of~~
18 ~~education, or charter school, the subject matter content of the online~~
19 ~~course is the same as that of the traditional classroom-based course.~~

20 ~~(7) The teacher of the online course holds the appropriate subject~~
21 ~~matter credential and meets the requirements for a highly qualified~~
22 ~~teacher pursuant to the federal No Child Left Behind Act of 2001~~
23 ~~(20 U.S.C. Sec. 6301 et seq.).~~

24 ~~(8) Statewide testing results for online pupils are reported and~~
25 ~~assigned to the school in which the pupil is enrolled for regular~~
26 ~~classroom courses, and to any school district or county office of~~
27 ~~education within which that school's testing results are aggregated.~~

28 ~~(9) The online course is offered by a high school, continuation~~
29 ~~school, county office of education, or charter school offering~~
30 ~~instruction in any of grades 9 to 12, inclusive.~~

31 ~~(10) No pupil is assigned to the online course unless the pupil~~
32 ~~voluntarily elects to participate in the online course and the parent~~
33 ~~or guardian of the pupil provides written consent before the pupil~~
34 ~~participates in the online course.~~

35 ~~(11) No pupil voluntarily electing to participate in the online~~
36 ~~course is denied access because the pupil lacks the computer~~
37 ~~hardware or software necessary to participate in the online course.~~

38 ~~(12) No pupil is charged for his or her participation in the online~~
39 ~~course.~~

1 ~~(13) Pupils enrolled in the online course take examinations by~~
2 ~~proctor, or other reliable methods used to ensure test integrity, and~~
3 ~~there is a clear record of pupil work, using the same method of~~
4 ~~documentation and assessment as used in a classroom-based course.~~

5 ~~(14) Contemporaneous records of the time that a pupil spends~~
6 ~~online in the course and in related activities, and of the time the~~
7 ~~teacher is online with pupils, are maintained by the school district,~~
8 ~~county office of education, or charter school.~~

9 ~~(e) Nothing in this section shall be interpreted to mean that a~~
10 ~~charter school provides classroom-based or nonclassroom-based~~
11 ~~instruction for purposes of the state board determination made~~
12 ~~pursuant to Section 47612.5.~~

13 ~~(d) Attendance accounted for pursuant to subdivision (a) and~~
14 ~~compliance with the requirements of subdivision (b) are subject~~
15 ~~to the audit conducted pursuant to Section 41020.~~

16 ~~(e) A pupil shall not be credited with more than five days of~~
17 ~~course attendance per calendar week or more than the total number~~
18 ~~of calendar days that regular classes are maintained by the school~~
19 ~~district, county office of education, or charter school during the~~
20 ~~fiscal year.~~

21 ~~(f) To remain eligible for claiming average daily attendance and~~
22 ~~generating apportionments, a pupil over 19 years of age enrolled~~
23 ~~in an online course or courses shall be continuously enrolled in~~
24 ~~public school and make satisfactory progress toward award of a~~
25 ~~high school diploma. The Superintendent shall, on or before~~
26 ~~December 31, 2013, adopt regulations defining “satisfactory~~
27 ~~progress.”~~

28 ~~(g) The Superintendent, in consultation with the Controller and~~
29 ~~the Director of Finance, on or before December 31, 2013, shall do~~
30 ~~all of the following:~~

31 ~~(1) Make revisions to any attendance accounting manual or~~
32 ~~guidance provided to a school district, county office of education,~~
33 ~~or charter school that are necessary to conform to this section.~~

34 ~~(2) Make revisions to any attendance accounting manual or~~
35 ~~guidance provided to local educational agencies that are necessary~~
36 ~~to clarify attendance accounting procedures for asynchronous~~
37 ~~online courses.~~

38 ~~(3) Make recommendations to the appropriate policy and fiscal~~
39 ~~committees in both houses of the Legislature and to the Governor~~
40 ~~regarding statutory changes that would be necessary to allow pupil~~

1 attendance in asynchronous online courses to be included in the
2 calculation of average daily attendance pursuant to Section 46300.

3 ~~(h) Pupil attendance in asynchronous online courses shall not~~
4 ~~be included in the calculation of average daily attendance pursuant~~
5 ~~to Section 46300 until the Superintendent has adopted rules and~~
6 ~~regulations pursuant to subdivision (l).~~

7 ~~(i) For purposes of calculating average daily attendance~~
8 ~~pursuant to Section 46300 and meeting the minimum instructional~~
9 ~~time requirements specified in paragraph (4) of subdivision (a):~~

10 ~~(1) A pupil enrolled in a noncharter school and engaged in~~
11 ~~educational activities in an online course meeting the requirements~~
12 ~~of subdivisions (a) and (b) shall be deemed to be under the~~
13 ~~immediate supervision and control of an employee of the school~~
14 ~~district or county office of education who possesses a valid~~
15 ~~certification document, registered as required by law.~~

16 ~~(2) A pupil enrolled in a charter school and engaged in~~
17 ~~educational activities in an online course meeting the requirements~~
18 ~~of subdivisions (a) and (b) shall be deemed to be attending at the~~
19 ~~schoolsite of the charter school.~~

20 ~~(j) For purposes of calculating average daily attendance pursuant~~
21 ~~to Section 46300, a school district, county office of education, or~~
22 ~~charter school claiming pupil attendance in an online course~~
23 ~~meeting the requirements of subdivision (b) shall not be required~~
24 ~~to meet the requirements of Article 5.5 (commencing with Section~~
25 ~~51745) of Chapter 5 of Part 28.~~

26 ~~(k) For purposes of this section, the following definitions apply:~~

27 ~~(1) “Asynchronous online course” means a course where the~~
28 ~~teacher and pupil may be online at different times and are unable~~
29 ~~to interact simultaneously.~~

30 ~~(2) “Synchronous online course” means a course where the~~
31 ~~teacher and pupil are online at the same time and able to interact~~
32 ~~at that time.~~

33 ~~(l) The Superintendent, in consultation with the Department of~~
34 ~~Finance, shall adopt rules and regulations, pursuant to the~~
35 ~~rulemaking provisions of the Administrative Procedure Act~~
36 ~~(Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
37 ~~Division 3 of Title 2 of the Government Code), for both of the~~
38 ~~following purposes:~~

39 ~~(1) Clarifying or expanding the procedures required for verifying~~
40 ~~the identification of pupils participating in asynchronous online~~

1 ~~courses meeting all of the requirements of subdivisions (a) and~~
2 ~~(b):~~

3 ~~(2) Including pupil attendance in asynchronous online courses~~
4 ~~in the calculation of average daily attendance pursuant to Section~~
5 ~~46300. The Superintendent shall ensure that the rules and~~
6 ~~regulations adopted for this purpose are consistent with the~~
7 ~~revisions and recommendations required pursuant to subdivision~~
8 ~~(g):~~

9 ~~(m) No provision of this section shall be waived unless the~~
10 ~~waiver is specifically authorized in statute.~~

11 ~~(n) This section shall become inoperative on July 1, 2018, and,~~
12 ~~as of January 1, 2019, is repealed, unless a later enacted statute,~~
13 ~~that becomes operative on or before January 1, 2019, deletes or~~
14 ~~extends the dates on which it becomes inoperative and is repealed.~~